

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

TLIF, LLC,)
)
)
Plaintiff,)
)
)
v.) Civil Action No.
)
)
AESCULAP IMPLANT SYSTEMS, LLC, and)
AESCULAP, INC.,)
) **JURY TRIAL DEMANDED**
)
)
Defendant.)
)
)

COMPLAINT

Plaintiff TLIF, LLC (“TLIF”) hereby complains of defendants Aesculap Implant Systems, LLC and Aesculap, Inc. (collectively, “Aesculap” or “Defendants”) as follows:

PARTIES

1. Plaintiff TLIF, LLC (“TLIF”) is a company organized under the laws of the State of Texas with its principal place of business located at 719 W. Front Street, suite 244, Tyler, Texas 75702.

2. Defendant Aesculap Implant Systems, LLC is a corporation organized under the laws of the State of Delaware with its principal place of business located at 3773 Corporate Parkway, Center Valley PA, 18034. On information and belief, defendant Aesculap regularly conducts business in this judicial district at least through its offers for sale, and sales of infringing devices by itself or on its behalf.

3. Defendant Aesculap, Inc., is a corporation organized under the law of the State of California with its principal place of business located at 3773 Corporate Parkway, Center Valley

PA, 18034. Defendant Aesculap, Inc., is the parent of Aesculap Implant Systems, LLC. On information and belief, defendant Aesculap, Inc., regularly conducts business in this judicial district at least through its offers for sale, and sales of infringing devices by itself or on its behalf.

JURISDICTION AND VENUE

4. This action arises under the patent laws of the United States, 35 U.S.C. § 101 *et seq.*
5. This Court has subject matter jurisdiction over this dispute pursuant to 28 U.S.C. §§ 1331 and 1338(a).
6. This Court may exercise personal jurisdiction over Aesculap based upon their contacts within this forum, including regularly conducting business in this judicial district, by, *inter alia*, selling/offering for sale infringing devices in this judicial district.
7. Venue is proper in this judicial district pursuant to 28 U.S.C. §§ 1391(b), (c), (d) or 1400(b).

BACKGROUND

8. United States Patent No. 6,143,032 (“the ‘032 patent”) entitled “Intervertebral Implant,” issued on November 7, 2000 to inventors Mr. Bernd Schafer and PD Dr. Henry Halm. Mr. Schafer was founder of Schafer Micomed, GmbH and Dr. Halm was senior consultant of the Department for Spine Surgery at the Medical Center of Neustadt/Holstein, and previously senior physician at the University of Münster, Spine Service of the Department of Orthopedic Surgery.

9. The ‘032 was assigned to Schafer Micomed, GmbH in Goppingen, Germany. Schafer Micomed, GmbH commercialized and sold the patented product as the “TIF-Cage”.

10. DePuy Spine SARL acquired the '032 family as part of its acquisition of the assets of Schafer Micomed, GmbH and Mr. Schafer. The patent assignment to DePuy Spine SARL was recorded on November 30, 2004.

11. The '032 family was acquired by Orthophoenix, LLC in a transaction with DePuy Synthes in July 2014 and then acquired by TLIF, LLC a Texas LLC, in September 2014. Assignment to TLIF, LLC was recorded by the USPTO on September 09, 2014.

THE '032 PATENT

12. TLIF owns United States Patent No. 6,143,032 ("the '032 patent") entitled "Intervertebral Implant," which was duly and legally issued by the United States Patent & Trademark Office on November 7, 2000. A copy of TLIF's '032 patent is attached to this Complaint as Exhibit A.

DEFENDANTS' INFRINGING ACTIVITIES

13. Without TLIF's authorization, Aesculap has made or imported, used, offered for sale and sold in the United States intervertebral implants which infringe one or more claims of the '032 patent (hereinafter, the "Accused TLIF Devices"). The Accused TLIF Devices include, but are not limited to Aesculap's T-Space PEEK Interbody System.

14. TLIF has been and will continue to be irreparably harmed by Aesculap's infringement of the '032 patent.

COUNT 1: PATENT INFRINGEMENT

15. TLIF re-alleges each and every allegation above, and incorporates them by reference herein.

16. Defendants have directly infringed and continues to directly infringe at least claims 1-5, 8, 11-14 of the '032 patent under 35 U.S.C. §271(a), by making and/or importing, using, offering to sell, and selling the Accused TLIF Devices in or into the United States.

JURY DEMAND

17. TLIF requests a trial by jury of all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff TLIF respectfully prays for:

- A. Judgment that defendant has and is infringing United States Patent No. 6,143,032 in violation of 35 U.S.C. § 271(a);
- C. An award of damages adequate to compensate Plaintiff TLIF for the patent infringement that has occurred pursuant to 35 U.S.C. § 284;
- D. An assessment of costs, including reasonable attorney fees, pursuant to 35 U.S.C. § 285, with prejudgment interest;
- E. Such other and further relief as this Court deems just and proper.

Dated: September 10, 2014

/s/ Andrew W. Spangler

Andrew W. Spangler
Texas Bar No. 24041960
Spangler Law P.C.
208 N. Green Street, Suite 300
Longview, TX 75601
Tel: 903-753-9300
Fax: 903-553-0403
spangler@spanglerlawpc.com

Thomas C. Wright
Texas Bar No. 24028146
Martin E. Rose
Texas Bar No. 17253100
M. Ross Cunningham
Texas Bar No. 2400762
ROSE•WALKER LLP
3500 Maple Avenue, Suite 900
Dallas, Texas 75219
Tel: 214-752-8600
Fax: 214-752-8700
twright@rosewalker.com
mrose@rosewalker.com
rcunningham@rosewalker.com

**ATTORNEYS FOR PLAINTIFF
TLIF, LLC**